



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N102]; [FXES11120100000–167–FF01E00000]

Notice of Intent to Prepare a Draft Environmental Impact Statement for the Kauai Island Utility Cooperative Long-Term Habitat Conservation Plan, Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (DEIS) to evaluate the impacts of several alternatives relating to the requested issuance of an Endangered Species Act (ESA) Incidental Take Permit (ITP) to the Kauai Island Utility Cooperative (KIUC) that would authorize take of listed species caused by activities covered under the Kauai Island Utility Cooperative Long-term Habitat Conservation Plan (KIUC LTHCP). We also provide this notice to announce a public scoping period.

DATES: The public scoping period begins with the publication of this notice in the *Federal Register* and will continue through **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Service will consider all comments on the scope of the DEIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. The Service will also hold one public scoping open house, at the following time and location during the scoping period:

- July 20, 2016—Kauai Community College, 3–1901 Kaumualii Highway, Lihue, Kauai, HI 96766, 5 to 7 p.m.

The scoping meeting will provide the public an opportunity to ask questions, discuss issues with Service and State staff regarding the DEIS, and provide written comments.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Include “KIUC HCP and scoping EIS” in the subject line of your request or comment.
- *Email:* KIUCLongTermhcp@fws.gov. Include “KIUC HCP and scoping EIS” in the subject line of the message.

- *Fax:* 808–792–9580, Attn: Field Supervisor. Include “KIUC HCP and scoping EIS” in the subject line of the message.
- *Internet:* You may obtain copies of this notice on the Internet at <https://www.fws.gov/pacificislands/>, or from the Service’s Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii (see **FOR FURTHER INFORMATION CONTACT** section).

We request that you send comments by only one of the methods described above.

See the **Public Availability of Comments** section below for more information.

FOR FURTHER INFORMATION CONTACT: Lasha-Lynn Salbosa, by telephone at 808–792–9442, or by email at Lasha-Lynn_Salbosa@fws.gov. Hearing or speech impaired individuals may call the Federal Information Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (DEIS) to evaluate the impacts of several alternatives relating to the requested issuance of an Endangered Species Act (ESA) Incidental Take Permit (ITP) to the Kauai Island Utility Cooperative (KIUC) that would authorize take of listed species caused by activities covered under the Kauai Island Utility Cooperative Long-term Habitat Conservation Plan (KIUC LTHCP). We also provide this notice to announce a public scoping period.

The KIUC LTHCP is being prepared by KIUC to address the effects of its generation, transmission, and distribution of electricity on listed species within the plan

area, which covers the full geographic extent of the Island of Kauai, Hawaii. KIUC anticipates requesting incidental take coverage for the endangered Hawaiian petrel (*Pterodroma sandwichensis*), threatened Newell's shearwater (*Puffinus newelli*), and a species proposed for listing as endangered, the band-rumped storm-petrel (*Oceanodroma castro*). These species are collectively referred to as the "Covered Species." The activities covered under the KIUC LTHCP ("Covered Activities") include construction of certain planned facilities; power line construction, reconfiguration, or undergrounding; installation and operation of streetlight fixtures at the request of State, County, or private entities; the operation and maintenance of all existing and planned KIUC facilities and infrastructure; and activities associated with the management of certain lands to mitigate for the take of Covered Species.

This notice was prepared pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6, and pursuant to section 10(c) of the ESA. We intend to prepare a DEIS to evaluate the impacts of several alternatives related to the potential issuance of an ITP under the KIUC LTHCP. KIUC intends to request a permit term of 30 years. The primary purpose of the scoping process is for the public and other agencies to assist in developing the DEIS by identifying important issues and identifying alternatives that should be considered.

Background

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA

implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). The term “harass” is defined in the regulations as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;

- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

KIUC Short-Term HCP

In 2011, the KIUC Short-Term Habitat Conservation Plan (STHCP) was approved by the Service, and KIUC received an ITP for the Covered Species (i.e., the Newell's shearwater, Hawaiian petrel, and the band-rumped storm petrel). The Covered Species are subject to injury or mortality as a result of colliding with KIUC-owned power lines and utility infrastructure, and injury or mortality as a result of attraction to nighttime lighting from KIUC-owned and operated streetlights and facilities. The ITP authorized an annual take amount of 162 Newell's shearwaters, two Hawaiian petrels, and two band-rumped storm petrels over a 5-year period, as a result of attraction to, or collision with, KIUC facilities. In total, the ITP authorized a combined take amount of 830 sub-adults or adults of the Covered Species.

Current estimates of the Newell's shearwater population, of which 90 percent nest on Kauai, range from 16,200 to 24,300, based on at-sea population estimates from 1998 through 2011 (Joyce 2013), and projected under various annual levels of decline (Griesemer and Holmes 2011). The Newell's shearwater rangewide population has experienced an over 75 percent decline from 1993 through 2009 (Day et al. 2003;

Holmes et al. 2009). The Hawaiian petrel population nests on several of the southeastern Hawaiian Islands, including Hawaii and Maui, with the total population estimated at 20,000 individuals (Spear et al. 1995). The majority of the breeding population nests on Kauai (Ainley et al. 1997). An updated assessment of the Hawaiian petrel population on Kauai is under way (A. Raine, personal communication, September 30, 2015). Seabird colony monitoring data reflect significant threats from feral pig, cat, barn owl, and rat predation, as well as habitat degradation from invasive plants. Combined with the take caused by power line collisions and light attraction, these threat factors have resulted in the extirpation of at least three breeding colonies of these species on Kauai since 2011 (Holmes and Troy 2008).

The 2011 STHCP established a comprehensive monitoring and research program designed to further evaluate the impact of the power line system on seabird populations and to provide key biological data to more adequately inform a longer term HCP and take authorization. To this end, KIUC provides funding to the Kauai Endangered Seabird Recovery Project (KESRP), a project of the University of Hawaii's Pacific Cooperative Studies Unit, to monitor seabird colonies and develop approaches to assess seabird-power line collisions. Due to the remote location of many power lines on Kauai and the nocturnal behavior of seabirds, in 2012 KESRP developed an acoustic song-meter monitoring system to detect seabird collisions. This acoustic system became the foundation for KIUC's Underline Monitoring Program (UMP) and has been accepted and is funded by KIUC.

During the course of implementation of the KIUC STHCP, KESRP observed a total of 28 seabird power line collisions using night vision equipment. Of the 28 seabird

power line collisions observed, only one of these collision events definitively resulted in an immediate grounded bird within the observer's field of view. Additionally, about 25 deceased Newell's shearwaters have been opportunistically found from 2011 through 2015, associated with KIUC power lines or lights. The acoustic system, which is able to monitor the power lines for seabird collisions more extensively than human observers can, has detected a minimum of 1,012 and 1,002 seabird collision events in 2014 and 2015, respectively (KIUC STHCP 2014 and 2015 UMP Reports). Since 2012, KESRP, in collaboration with KIUC, has identified all high and medium risk power line spans that pose a threat to the Covered Species. These high and medium risk lines are continually monitored every year, and those data are used to plan and test for effective minimization measures, including reconfiguring lines or installing bird diverters. While the acoustic system has been successful in detecting seabird power line collisions, only a subset of the power line system can be monitored and therefore collisions outside of the monitored areas must be estimated. Moreover, while a minimum of 1,002 seabird collision events have been detected in 2015, the fate of the birds that collided with these lines is unknown. Based on KESRP field observations, it is certain that some portion of these collisions results in immediate grounding or mortality, and that some additional proportion results in harm or injury, or potential mortality sometime after the collision event. Previous scientific studies based on waterfowl and their interactions with power lines have estimated that this subsequent mortality after the collision event could range from 20 percent to 74 percent of total detected collisions (Bevanger 1995; Bevanger 1999; Beaulaurier 1981; and Shaw et al. 2010).

The STHCP has been successful in guiding measures that KIUC has implemented to mitigate the effects of its existing facilities on the Covered Species; increasing knowledge related to the impact of KIUC's power line system on seabird populations; providing key biological data concerning the Covered Species; and improving our understanding of the effectiveness of conservation measures to more adequately inform a longer term habitat conservation plan and take authorization.

In 2015, KIUC spent \$2.32 million to implement the conservation program under the STHCP. Sixty-two percent of this budget funded seabird colony management (i.e., predator control and monitoring). Under the STHCP, KIUC is funding a total of 851 acres of seabird colony management (i.e., predator control) at three sites within the State's Hono o Na Pali Natural Area Reserve, and a larger location within the National Tropical Botanical Garden's Upper Limahuli Preserve. The remaining budget funds the retrieval and rehabilitation of seabirds on Kauai, and the KIUC Underline Monitoring Program, which includes testing and installation of avian deterrent devices. KIUC has undergrounded or reconfigured 25 percent of their identified high collision-risk power lines since 2011. KIUC continues to use the underline monitoring data to direct minimization actions, including reconfiguring or undergrounding power lines, and installing bird deterrent devices to minimize impacts from high collision-risk power lines. Although KIUC's current mitigation and minimization programs are meaningful, these efforts are likely not commensurate with the actual level of take occurring.

The STHCP expiration date was in May 2016. On April 12, 2016, we received an application for renewal of that permit pending preparation of the LTHCP.

Proposed Long-Term Habitat Conservation Plan

The KIUC LTHCP is being prepared by KIUC to cover the generation, transmission, and distribution of electricity within the plan area, which covers the full geographic extent of the Island of Kauai, Hawaii. KIUC intends to submit the LTHCP as part of its application for a Federal ITP and a State incidental take license, in accordance with respective Federal and State permit issuance criteria. KIUC intends to develop the LTHCP in coordination with the Service, Hawaii Department of Land and Natural Resources-Division of Forestry and Wildlife, Kauai Endangered Seabird Recovery Project, Kauai Seabird Habitat Conservation Program, Kauai Humane Society, and the National Tropical Botanical Garden.

In response to the Service's recommendation in 2011, KIUC was participating in the planning for a State-sponsored islandwide HCP (the "Kauai Seabird Habitat Conservation Program" or "KSHCP") which was intended to address take of the Covered Species from attraction to, or collision with various lights and power lines on the island of Kauai, due to activities by numerous entities in addition to KIUC. However, in November 2015, the State, in consultation with the Service, decided to limit the KSHCP planning effort just to light attraction take. As a result of this decision to limit the KSHCP to light attraction take, KIUC is now seeking long-term incidental take authorization through its own separate KIUC LTHCP.

Covered Species and Activities: The Covered Species addressed in the LTHCP will be the same as those addressed in the STHCP: The endangered Hawaiian petrel, threatened Newell's shearwater, and the band-rumped storm-petrel, a species proposed for listing as endangered. As noted above, the Covered Species are subject to collisions

with power lines and other infrastructure while flying at night between their nesting colonies and at-sea foraging areas. The Covered Species, particularly fledglings, are also affected by and attracted to bright nighttime lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures.

The KIUC LTHCP and ITP will address the incidental take of the Covered Species caused by Covered Activities that are described and analyzed in the LTHCP. In accordance with the requirements of section 10(a)(2)(A) of the ESA, the LTHCP will also address: the impacts to the Covered Species caused by the taking; the steps KIUC will take to minimize and mitigate those impacts; the funding that will be available to implement those steps; what alternative actions to the taking that KIUC considered and the reasons why such alternatives are not being utilized; and other measures that the Service may require as being necessary or appropriate for purposes of the plan.

The KIUC intends to utilize new information generated through implementation of the STHCP to develop a long-term HCP addressing the Covered Species in support of its request for a 30-year ITP. It is anticipated that KIUC will request authorization for the lethal take of approximately 100 to 1,000 individuals annually of the Covered Species combined. A more specific total combined amount of take, and a more specific amount of take for each Covered Species that KIUC will request will be described in the LTHCP.

KIUC's existing facilities include over 1,400 miles of electrical transmission and distribution lines, two fossil fuel-fired generating stations, two hydroelectric stations, two 12-megawatt solar energy parks, twelve substations, and approximately 3,500 streetlights. Covered Activities under the KIUC LTHCP are expected to include: (1)

KIUC operations, including actions necessary to construct, operate, maintain and repair all existing and certain planned KIUC facilities and infrastructure; (2) minimization measures, including installation of bird deterrents, undergrounding power lines, line reconfiguring, line removal, relocating facilities, and line rerouting; and (3) mitigation measures, including construction and maintenance of predator-proof fenced enclosures, invasive predator reduction efforts, and seabird colony monitoring and habitat management activities to create or enhance seabird breeding habitat. The KIUC LTHCP is also expected to include the following as Covered Activities: 600 new streetlights; approximately 15 miles of new transmission lines (much of it on already constructed poles or underground); approximately 15 miles per year of line improvements, re-configured, or undergrounded distribution lines; the closure of one substation and the construction of 3 or more new facilities, including the Aepo Substation, Hanahanapuni Switching Station, and the Kilohana Switching station. Additional substations may also be built for renewable projects that cannot be integrated into the existing facilities due to their location, capacity, or operation constraints.

Minimization and Mitigation Measures: The KIUC LTHCP is expected to include a comprehensive minimization program that will be based on the results of extensive underline monitoring conducted under the STHCP. These minimization measures would be designed to reduce the amount of Covered Species collisions with power lines in areas known to have a high risk of seabird-line collisions. These minimization measures are likely to include installation of bird deterrents and line reconfiguring.

The KIUC LTHCP is expected to include a variety of conservation measures to mitigate unavoidable impacts to the Covered Species. One set of measures is intended to improve the breeding success of the Covered Species. These measures are likely to include: the installation and maintenance of predator-proof fencing at two or more locations encompassing at least several hundred acres of existing Covered Species breeding colonies in northern, interior areas of Kauai; post-fencing efforts to greatly reduce or eliminate predator populations from within the fenced areas; efforts to reduce predator populations at other locations; and one or more social attraction projects to create new breeding areas within appropriate habitat for the Covered Species. Other mitigation measures are expected to include: continued implementation of the *Save Our Shearwaters* program which retrieves downed seabirds and releases them back to the wild following evaluation and any necessary rehabilitation; surveys to identify the location of additional breeding colonies of the Covered Species on Kauai; and research to evaluate methods of improving Covered Species breeding success through habitat and predator management.

Draft Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that the proposed KIUC LTHCP and ITP may have significant effects on the human environment. Therefore, before deciding whether to

issue an ITP, we will prepare a DEIS to analyze the environmental impacts associated with that action.

The DEIS will consider the impacts of the issuance of an ESA section 10(a)(1)(B) permit on the human environment. The DEIS will also include an analysis of a reasonable range of alternatives. Such alternatives may include, but are not limited to, variations in: the permit term or permit structure; the level of take allowed; the level, location, or type of minimization, mitigation, or monitoring provided under the HCP; the scope of Covered Activities; the list of Covered Species; or a combination of these factors. Other alternatives could include undergrounding, reconfiguring or taking other measures to minimize the take at all five power line segments that accounted for 72 percent of all seabird collisions in 2014, expanding existing predator control areas to maximize seabird protection, and the addition of one or more seabird colony management sites in the Upper Manoa Valley. Additionally, a No Action Alternative will be included. Under the No Action Alternative, the Service would not issue an ITP, and KIUC would be obligated to avoid incidental take of federally-listed species or risk violation of Federal and State law.

The DEIS will identify and describe direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. Following completion of the environmental review, the Service will

publish a notice of availability and a request for comment on the DEIS, which will include a draft of the proposed KIUC LTHCP.

Request for Information

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Native Hawaiian organizations or entities, industry, or any other interested party on this notice. We will consider these comments in developing the DEIS. We seek specific comments on:

1. Biological information and relevant data concerning the Covered Species;
2. Additional information concerning the range, distribution, population size, and population trends of the Covered Species;
3. Potential direct, indirect, and cumulative impacts that implementation of the proposed Covered Activities and mitigation/minimization measures could have on the Covered Species; and other endangered or threatened species, and their communities or habitats; and other aspects of the human environment;
4. Whether there are connected, similar, or reasonably foreseeable cumulative actions;
5. Other possible alternatives to the proposed permit action that the Service should consider, including additional or alternative mitigation and minimization measures;
6. Other current or planned activities in the subject area and their possible impacts on Covered Species;

7. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
8. Identification of any other environmental issues that should be considered with regard to the proposed KIUC LTHCP and permit action.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Scoping Meeting

See **DATES** section above for the date and time of the public scoping meeting. The primary purpose of the meeting and the public comment period is to provide the

public with a general understanding of the background of the proposed action and to solicit suggestions and information on the scope of issues and alternatives we should consider when preparing the DEIS. Written comments will be accepted at the meeting. Comments can also be submitted by the methods listed in the **ADDRESSES** section. Once the DEIS and proposed KIUC LTHCP are complete and made available for review, there will be additional opportunity for public comment on the content of these documents.

Persons needing reasonable accommodations in order to attend and participate in the public scoping meeting should contact the Service's Pacific Islands Fish and Wildlife Office using one of the methods listed above in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

**Theresa Rabot,
Deputy Regional Director,
Pacific Region, U.S. Fish and Wildlife Service,
Portland, Oregon.**

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